IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5782 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDRASINH J MAHIDA

Versus

RELIANCE MACHINES MANUFACTURERS PRIVATE LTD.

Appearance:

1. Special Civil Application No. 5782 of 1988

MR PC MASTER for Petitioner No. 1

MS DT SHAH on behalf of MR NILESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 07/02/2003

ORAL JUDGEMENT

The present petition is filed against the award

of the Labour Court, Navsari dated 27-6-1988 in reference (LCN) No.122/84 by which the Labour Court rejected the claim of the petitioner for reinstatement with full back wages. The petitioner said that award of the Labour Court is contrary to the mandatory provisions of Section 25 F of the Industrial Disputes Act and against the settled proposition of law, equity and good conscience.

2) It is the case of the petitioner that he was working as a welder in the respondent-company from the year 1972 and in May, 1979 due to some personal problems he demanded money from the respondent company. At that time, the petitioner was told that if the petitioner would give the resignation, the respondent would pay him all his legal dues and thereafter, again he would give him the service Since the petitioner was in the need of money, he tendered his resignation dated 30-5-1978, which would come into effect from 1-7-1978.

3) It was further stated that the petitioners' resignation was to come into effect from 1-7-1978 and on the same date, the respondent-company had appointed the petitioner by appointment order dated 1-7-1978. The petitioner, therefore, contended that there was no break in service of the petitioner and he continued to serve the company without any break.

4) It was, however, stated by the petitioner that the respondent-company vide its letter dated 13-4-1984 terminated the services of the petitioner on the ground of the petitioner being surplus labourer. The petitioner has further stated that he had not received the said termination order of the respondent-company and though no such order was passed, the same was fabricated subsequently. It was further stated that the respondent-company wrote a letter on 14-4-1984 to the petitioner stating that he has not accepted the termination order on 13-4-1984, the company had enclosed a demand draft for Rs.7,530/- dated 16-4-1994, paying the dues of the petitioner on his retrenchment.

5) Being aggrieved and dissatisfied by the said action of the respondent company, the petitioner had raised an industrial dispute before the Assistant Labour Commissioner and ultimately the said dispute was referred to the Labour Court, Navsari. Before the Labour Court the petitioner filed a statement of claim and the respondent-company also filed its written statement. After hearing the parties, the Labour Court has passed an award rejecting the claim of the petitioner for reinstatement with full back wages. It is this order of

the Labour Court which is under challenge in the present petition.

6) Main ground of challenge against the award of the Labour Court was that the said award was contrary to the evidence on record. It was stated that the petitioner was working as a Welder from 1972 and there was no other Welder except the petitioner and the respondent-company was always in need of service of the Welder for its work. Hence, there was no question of retrenching the petitioner being surplus employee. It was further submitted that the Labour Court has committed an error of law while deciding the said retrenchment. It is further stated that the respondent-company has not been able to establish the retrenchment by showing that the petitioner was surplus. In absence of any evidence laid by the respondent-company, the Labour Court has wrongly come to the conclusion that the petitioner was a surplus employee and he was retrenched by the respondent-company. The petitioner has further stated that the retrenchment order was created subsequently and was not given to the petitioner. It was further stated that though it was stated that the retrenchment order alongwith the amount of retrenchment compensation were offered to the petitioner in the presence of two witnesses, the said witnesses were not examined by the Labour Court nor the person who has passed the retrenchment order was examined. Even the person who has given the retrenchment order to the petitioner was not examined and in the absence of the evidence of these necessary witnesses, the Labour Court has come to the conclusion that the retrenchment order was validly passed against the petitioners.

7) It is also contended by the petitioner that the respondent company has not stated anything before the Labour Court regarding the seniority list and also seniority list was not placed on the notice board. Hence, the respondent-company has violated the provisions of Industrial Disputes (Rules). It is further contended that the respondent-company did not comply with the mandatory provisions of Section 25 F and 25 G of the Industrial Disputes Act and hence, the retrenchment order passed by the respondent-company is illegal, inoperative and held to be invalid. Since the Labour Court has committed an error in law, as well as on facts, this Court while exercising its writ jurisdiction should quash and set aside the said award of the Labour Court, directing the respondent-company to reinstate the petitioner with full back wages.

8) The petition was admitted by this Court on 29-8-1988. Thereafter a Civil Application was moved by the petitioner seeking protection from this Court against the eviction from the premises, which were given to the petitioner for his residence. This Court has passed an order on 16-12-1992 in the main petition granting ad-interim relief to the effect that the respondent-company was directed not to evict the premises of the petitioner and quarter occupied by him. However, this Court has clarified that even if any decree or any order was obtained by the respondent-company against the petitioner or evicting him from the quarter in question, the same should not be executed without the permission of this Court. It was further clarified in the order that the proceedings of Civil Suit No.40 of 1985 in the Court of Civil Judge (J.D.), or any other proceedings taken out by the respondent company for getting possession of the quarter was not stayed. But the company was restrained from executing the final decree obtained for eviction the quarter without the permission of this Court. In view of these facts the order passed in the main petition, Civil Application, was disposed of by this Court.

9) On being served with the rule, the respondent filed its appearance and an affidavit-in-reply was filed on 9th September, 2002. In the affidavit-in-reply it is inter alia stated that the petitioner obtained his retrenchment and was in the employment under various companies and was doing work as a contractor. It was further stated that the petitioner was working in Metal Beds Company and some other companies. The respondent-company has also stated that the business activity of the respondent-company was discontinued since 1995 and that function of the company was totally closed. It was further stated that the Labour Court has decided the reference on the basis of the material and evidence adduced by the parties to the proceedings and the Labour Court has rightly come to the conclusion that the provisions of Section 25 F of the Industrial Disputes Act were duly complied with and the respondent-company has validly passed the order of retrenchment. It was further stated that the petitioner has not pleaded before the Labour Court about non-compliance of the provisions of Section 25 F of the Act on the basis of the letter dated 14-4-1984. The petitioner has also not mentioned about the justification of the retrenchment order passed by the respondent-company. It was further stated that while exercising the supervisory and discretionary powers under Article 227 of the Constitution of India, this Court should not interfere with the award of the Labour Court, especially when the said award was passed on the basis of

the evidence led by the parties and finding arrived at by the Labour Court would not be said to be perverse in any respect.

10) The petitioner has also filed affidavit in rejoinder to the affidavit in reply filed by the respondent company. The petitioner has objected to the filing of the affidavit in reply at this late stage as the petition was adjourned only for the purpose of settlement, if possible, between the parties. However, no settlement was arrived at between the parties and affidavit-in-reply was filed by the respondent-company.

11) In the said affidavit in reply the respondent-company has reiterated that the company has passed the valid retrenchment order and the Labour Court has confirmed the said order on the basis of the materials and evidence adduced by the parties to the proceedings. It was further stated that the petitioner has neither contended nor pleaded specifically about non-compliance of the provisions of Section 25 F of the Act. In affidavit in rejoinder filed by the petitioner, it was stated that though the respondent-company has contended before the Labour Court that the petitioner was a surplus labourer, the company could not justify its action before the Labour Court by proving its case beyond the shadow of doubt. The petitioner has also denied other averments made by the repsondent-company in its affidavit in reply and reiterated that the award passed by the Labour Court is contrary to the facts and evidence on record and also against the provisions of the Act.

12) Heard Mr.P.C.Master, the learned advocate appearing for the petitioner and Ms.D.T.Shah learned advocate appearing for the respondent company.

13) Mr.Master has emphatically argued that the respondent-company has not complied with the provisions of Section 25 F of the Act and hence the order of retrenchment passed by the respondent-company was not valid and proper order and the Labour Court has committed a grave error of law in confirming the said order of retrenchment. He has further submitted that the petitioner was not a surplus workman as the petitioner was the only welder in the respondent-company. It was further submitted that the petitioner was given an artificial break, as the petitioner's so called resignation was accepted with effect from 1-7-1978 and on the same date, he was re-employed and since there being continuity of service, the petitioner should not have

been retrenched by the respondent-company. Mr.Master has further submitted that the petitioner was not given the retrenchment compensation on the date on which the petitioner was retrenched and hence the said retrenchment was contrary to the settled legal position. Mr.Master has further submitted that there was no justification on the part of the respondent-company to retrench the petitioner. He has further submitted that the Trial Court has wrongly relied on the letter dated 13-4-1984 and 14-4-1984 produced at Annexure-C and D respectively to the petition. As a matter of fact, the letter dated 13-4-1984 was not received by the petitioner and as far as the letter dated 14-4-1984 is concerned it was stated that no proper persons were examined on behalf of the respondent company. Neither any witnesses whose names were mentioned in the letter were examined nor the person, who has written the said letter was examined. He has further submitted that the right of retrenchment of the respondent-company is not unrestricted and the respondent-company has to satisfy apart from compliance of Section 25 F, that there was no mala fide, arbitrariness, unfair labour practice or victimisation. For this proposition, he has relied on the decision of this Court in the case of Surat Mahila Nagrik Sahkari Bank Ltd. v. Mamtaben Mahendrabhai Joshi 2001 Lab.I.C. 222, wherein it is held that it is the duty of the employer to establish the fact that said decision of termination is justified in the circumstances of the case. So, without justification of such termination, even in case of complying the provisions of Section 25 F such termination is bad, mala fide, arbitrary and amount to unfair labour practice. Mr.Master has further submitted that if retrenchment is held to be illegal the reinstatement would follow as a matter of right. Mr.Master has further submitted that other person junior to the petitioner was retained in the company and the petitioner was terminated on the ground being surplus. This is contrary to the law laid down by the Hon'ble Supreme Court in the case of J.K.Iron & Steel Co. Ltd. v. Its Workmen, AIR 1960 SC 1288 wherein it is held that "the order of retrenchment should be made by the management and the decision by the management that some are better qualified than others, cannot be questioned by the adjudicator, unless he comes to the conclusion that the preferential treatment was due to malafides, but if the preferential treatment given to the juniors, ignores the well recognised principle in the industrial law that "first come last go" without any acceptable or sound reasoning, a tribunal or an adjudicator will be well justified to hold that the action of the management is not bona fide."

14) Mr.Master has further relied on the decision of the Hon'ble Supreme Court in the case of Mohanlal v. the Management of M/s.Bharat Electricals Ltd., AIR 1981 Supreme Court 1253, wherein it is held that where the termination is illegal, especially where there is an ill-effective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits, namely, back wages in full and other benefits.

15) In view of these submissions and the authorities cited by him, Mr.Master has candidly urged that the order passed by the Labour Court is required to be quashed and set aside and the petitioner may be ordered to be reinstated with full back wages and all other consequential benefits.

16) Ms.D.T.Shah, the learned advocate appearing for the respondent-company, on the other hand has supported the order passed by the Labour Court. She has further submitted that the finding arrived at by the Labour Court cannot be said to be a perverse finding and hence this Court while exercising its prerogative writ jurisdiction under Articles 226 and 227 of the Constitution of India should not interfere with the finding arrived at by the Labour Court. She has further submitted that the respondent-company has retrenched the petitioner after following the provisions contained in Section 25 F of the Act. Since the petitioner was a surplus in the respondent-company, retrenchment order was passed against him. The petitioner was offered the retrenchment compensation on the date on which he was retrenched, however, the same was not accepted by the petitioner and hence the Demand Draft was sent to the petitioner along with the letter dated 14-4-1984. Simply because there was some discrepancy in the dates, it cannot be said that the letters dated 13-4-1984 and 14-4-1984 were concocted and subsequently created. The respondent-company has properly explained the discrepancy in the date and submitted that the Demand Draft dated 16-4-1984 was attached along with the letter dated 14-4-1984, which was dispatched on 16-4-1984 but the said date was not corrected.

17) It was further submitted that the Labour Court after appreciation of evidence has come to a just and correct conclusion and it is not open for this Court to re-appreciate the said evidence and hence, the order passed by the Labour Court should not be interfered with

in the present writ petition filed by the petitioner.

18) After having heard the learned advocates appearing for the respective parties and after having gone through the relevant materials and evidence on record of this case, as well as after having gone through the award passed by the Labour Court, I am of the view that there is no infirmity in the award passed by the Labour Court. The evidence led before the Labour Court was properly appreciated and their evidentiary value was correctly evaluated by the Labour Court. The authorities cited by Mr.Master cannot render any assistance to him as in the present case, it is difficult to come to the conclusion that there was no justification in passing the retrenchment order against the petitioner. If the retrenchment order is properly passed and if it is justified looking to the facts and circumstances of the case and ultimately if the said order is confirmed by the Labour Court while examining the case in its true perspective, this Court cannot interfere with the said finding arrived at by the Labour Court. Here in the present case, all the evidence are on record and the action of the respondent-company was properly explained and it is believed to be so by the Labour Court. It is not correct to say that the Labour Court has erroneously come to the conclusion to the effect that once the provisions of Section 25 F are satisfied, it is not necessary for the Labour Court to examine as to whether the retrenchment order was justified or not. As a matter of fact, the Labour Court has not merely passed this order on the premises that the conditions laid down in Section 25 F of the Act are satisfied. It is further observed that looking to the facts and circumstances of the case and after appreciation of the evidence led before it, the order of retrenchment was justified. In this view of the matter, I do not see any infirmity in the order passed by the Labour Court and hence I do not think it proper to exercise the power vested in this Court to interfere with the order passed by the Labour Court and hence the present petition is dismissed. Rule is discharged with no order as to costs.

(K.A.Puj, J.)
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